



United States Attorney
Southern District of New York

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January 2, 2018

VIA ECF and BY HAND

Hon. Gabriel W. Gorenstein
United States Magistrate Judge
United States District Court
500 Pearl Street
New York, New York 10007

**Re: *ACLU v. Dep't of Health and Human Services, et al.*,
No. 17 Civ. 5514 (GBD) (GWG)**

Dear Judge Gorenstein:

This Office represents defendants the Department of Health and Human Services, the Department of Justice, the Department of Labor, and the Department of the Treasury in the above-referenced proceeding brought pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq.* Having consulted with counsel for plaintiff, we respectfully submit this letter pursuant to the Court's order dated November 2, 2017, which directs the parties jointly to report on the status of this matter every sixty days, beginning today. *See* ECF No. 27.

Department of Health and Human Services (“HHS”): On December 28, 2017, HHS notified plaintiff that it had located 351 pages of responsive records, of which it was releasing 145 in full and 84 pages with redactions, and was withholding 122 pages in their entirety.¹ The pages that were released in full and in part were sent to plaintiff in electronic format by overnight delivery. HHS is continuing to search for responsive records.

Department of Justice (“DOJ”): On December 15, 2017, the DOJ Civil Division provided plaintiff with a no-records response. Plaintiff has indicated that it does not intend to challenge this response. Today, DOJ's Civil Rights Division released 127 pages of records to plaintiff in response to the request. DOJ's Office of Information Policy (“OIP”) is processing the FOIA request for the Offices of the Attorney General, Deputy Attorney General, Associate Attorney General, Legislative Affairs, and Legal Policy (“OLP”). The search of OLP is still ongoing; however, all other searches being conducted by OIP are complete. While the OLP search is still pending, OIP has started to process records to determine responsiveness and the possible exemptions that may apply to these records. OIP anticipates that its search of OLP will be completed by the date set for the next status report (*i.e.*, March 5, 2018). DOJ's Office of

¹ HHS's initial release was previously anticipated to be made in mid to late November but was delayed for further internal review.

Legal Counsel (“OLC”)'s search also is still pending. OLC anticipates that it will be able to complete the search by the date set for the next status report.

Department of Labor (“DOL”): DOL has determined that responsive records, if any, would likely be located in the Office of the Solicitor (“SOL”) and the Employee Benefits Security Administration (“EBSA”), and thus has searched these two components. SOL has reported that it has no records. EBSA is continuing its search. Plaintiff subsequently has requested that DOL also search the Office of Federal Contract Compliance Programs. The parties are discussing whether they can agree on search terms for that additional search. DOL anticipates that these searches will be completed by the date of the next status report. While the timing for processing any responsive records will depend on volume, the parties anticipate that the preliminary results of these searches will allow them to discuss possible ways to streamline processing with respect to any responsive records.

Department of the Treasury (“Treasury”): Treasury's initial search yielded no responsive records. After further discussion between counsel for both sides, plaintiff provided suggested search terms and Treasury is conducting a targeted follow-up search.

Pursuant to the Court's November 2 Order, the parties will provide a status update on or before March 5, 2018.

Respectfully submitted,

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